



United States Environmental Protection Agency
Region I – New England
5 Post Office Square - Suite 100
Boston, MA 02109-3912

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Douglas J. Macone, President
Assabet Sand and Gravel Company, Inc.
16 Knox Trail
Acton, MA 01720

Subject: Request for Information Pursuant to Section 308 of the Clean Water Act,
33 U.S.C. § 1318, Docket No. 308-11-133.

Dear Mr. Macone:

On August 26, 2010, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of the Assabet Sand and Gravel Company, Inc. facility (hereafter referred to as "Assabet Sand and Gravel" or "the Facility") located at 16 Knox Trail in Acton, Massachusetts.

The federal Clean Water Act (the "CWA" or "Act"), 33 U.S.C. § 1251, *et seq.*, prohibits the discharge of pollutants into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Discharges of stormwater or process wastewaters without appropriate NPDES permit authorization are violations of the CWA. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Sections 308(a) and 311(m) of the CWA, 33 U.S.C. §§ 1318(a) and 1321(m), authorize EPA to require any person to provide the information needed to determine whether there has been a violation of the Act. Accordingly, you are hereby required to provide the information requested in Enclosures 2 and 3 ("Information Request" or "Request") within **forty-five (45) calendar days** of your receipt of this letter, unless otherwise specified.

Please read the instructions and definitions in Enclosure 1 carefully before preparing your response. Answer each question as clearly and completely as possible. Please respond separately to each of the questions, referencing each question by number. Your response must include copies of all records or information that are referenced in the response. If the documentation that supports a response to one question also applies to another question, you need only to submit one copy of that documentation.

Your response to this Request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the Request. The certification must state that your response is complete, and contains all the information and documentation

available to you that is responsive to the Request. A Statement of Certification is enclosed with this letter (Enclosure 4).

Information submitted pursuant to this request shall be sent by certified mail and shall be addressed as follows:

David Turin
U.S. Environmental Protection Agency
Mail Code OES04-3
5 Post Office Square, Suite 100
Boston MA 02109-3912

The following websites provide information on EPA's NPDES Regulations, and Oil Pollution Prevention Regulations, respectively:

<http://cfpub.epa.gov/npdes/index.cfm>
<http://cfpub.epa.gov/npdes/stormwater/swbasicinfo.cfm>
<http://www.epa.gov/emergencies/content/spcc/index.htm>.

The Small Business Regulatory Enforcement and Fairness Act ([↑]SBREFA[↑]) provides small businesses the opportunity to submit comments on regulatory enforcement at the time of an Agency enforcement action. The Information Sheet (Enclosure 5) contains information regarding these rights, and describes compliance assistance that may be available to you. The Small Business Ombudsman can be reached at 1-800-368-5888. The EPA provides this information to businesses whether or not they qualify as small businesses, as defined by the Small Business Administration. Please be aware that availing yourself of this opportunity does not relieve Assabet Sand and Gravel of its responsibility to comply with applicable federal and state laws and regulations, including applicable NPDES permit requirements.

Please note that your compliance with this Request is mandatory. Failure to respond fully and truthfully, or to adequately justify your failure to do so, may result in civil penalties or criminal

fines under Section 309 of the Act, 33 U.S.C. ⁱ 1319. In addition, anyone who knowingly

submits false information may be subject to prosecution under 18 U.S.C. ⁱ 1001. Please be aware that the issuance of this letter and your response to this Request does not relieve you of any responsibility to comply with federal and state laws and regulations, or any applicable NPDES permit.

Although the information requested must be submitted to EPA, you are entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B. If EPA determines that the information you have designated meets the criteria in 40 C.F.R.

ⁱ 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, EPA may make the information available to the public without further notice to you.

If you have any technical questions relating to this Request, you may contact David Turin in EPA's Water Technical Unit at (617) 918-1598 or via email at turin.david@epa.gov. If you have legal questions relating to this Request, you or your attorney may contact Edith Goldman, EPA Senior Enforcement Counsel, at (617) 918-1866.

Sincerely,

Roger Janson, Technical Enforcement Program Manager
Office of Environmental Stewardship

Enclosures: (1) Instructions
 (2) Information Request
 (3) Stormwater and Discharge Monitoring Program
 (4) Statement of Certification
 (5) Information Sheet (U.S. EPA Small Business Resources)

cc: Nora Chorover

Enclosure 1

Information Request Instructions

1. Please provide a separate narrative response to each and every question and subpart of a question in this Request. Precede each response with the text and the question number and subpart (1.a., 1.b., 1.c., etc.) to which the information corresponds.
2. If any questions cannot be answered in full, answer to the extent possible. If your responses are qualified in any manner, please explain.
3. Any documents referenced or relied upon by you to answer any of the questions in the Request must be copied and submitted to EPA with your response. All documents must contain a notation indicating the question and subpart to which they are responding.
4. If information or documents not known or not available to you as of the date of submission of your response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the facts, you must notify EPA as soon as possible and provide a corrected response.

Enclosure 2

Unless stated otherwise, the questions in this Request pertain to the Assabet Sand and Gravel facility at 16 Knox Trail, Acton, MA, 01720.

1. Please provide the following business and ownership information:
 - a. Specify the full legal name(s) with the exact spelling, the business mailing address, and phone number for Assabet Sand and Gravel Company, Inc. If incorporated, specify the state of incorporation and the principal place of business. If a partnership, provide the names and addresses of all the partners. If Assabet Sand and Gravel Company, Inc. has a parent company, please provide the parent company's name and address.
 - b. Specify who owns or has owned Assabet Sand and Gravel Company, Inc. from January 1, 2006 to the present. If a transfer of ownership has occurred during this period, identify the current owner(s), all prior owners during the above-referenced period, and the dates of all transfers.
 - c. A diagram that illustrates the corporate and management structure of Assabet Sand and Gravel Company, Inc., any parent company, and any subsidiaries. Please identify who has responsibility for environmental compliance within each organization.
 - d. The primary and secondary Standard Industrial Classification ("SIC") codes for the Facility.
2. Please provide the following information for each operation¹ at Assabet Sand and Gravel from January 1, 2006 to the present:
 - a. A list and description of each operation and the date the operation commenced, in chronological order, and, if applicable, date the operation ceased. Provide a detailed site diagram that illustrates the locations of where each operation occurs, or has occurred.
 - b. A description of all industrial activities associated with the operations listed in Question 2.a. Indicate the period of time and date that these industrial activities occur or have occurred. Provide a detailed site diagram that illustrates the location of these activities.
3. Please describe process wastewaters and wastewater streams² that are or were generated by each operation and industrial activity listed in response to Question 2 and provide the

¹ For the purpose of this Request, an "operation" is a complete manufacturing or industrial process such as, but not limited to, sand and gravel mining, aggregate processing (i.e. crushing, sorting, washing), vehicle maintenance, fuel-oil storage tanks & dispensing stations, etc.

² Process wastewaters include, but are not limited to, aggregate material wash waters, vehicle and equipment cleaning waters, rinse-down and wash-out waters, dust suppression systems, building floor wash waters, and equipment contact and non-contact cooling waters.

following information:

- a. A detailed description of the nature of each process wastewater or wastewater stream including:
 - i. the source or sources of process water that contribute to, or have contributed to, the process wastewater stream generation.
 - ii. all transport, storage, treatment steps, and the ultimate disposition³ of the process wastewater streams listed in response to this Question.
 - iii. any chemicals, additives, or other materials used in each operation.
 - b. A site diagram, flow schematic, or wastewater stream diagram that illustrates how process wastewater is managed.
 - c. For each wastewater stream, the date the wastewater stream commenced, the date it ceased, and the average number of days per month and months per year that the wastewater stream occurs.
 - d. In gallons, the estimated or actual daily maximum and monthly average waste stream flow rates and the total average annual volume of each waste stream. If the flow rate is estimated, indicate the method used to estimate the flows.
 - e. For each wastewater stream described in response to Question 3, above, have there been any discharges of process wastewater, sanitary wastewater, or cooling waters to a wetland or surface water (e.g. pond, lake, brook, river, stream) since January 1, 2006?
4. For each discharge identified in 3.e. above, please provide the following additional information:
- a. The name and location of the surface water or wetland. If unknown, identify the unnamed surface water or wetland on a map and indicate the nearest named surface water or wetland.
 - b. For discharges of wastewaters to property not owned or controlled by Assabet Sand and Gravel, a copy of any lease, contract, or other documentation authorizing the release.
 - c. All analytical monitoring results for discharges from January 1, 2006 to the present. Results should be referenced to a facility site diagram to illustrate the location where monitoring occurred.
 - d. If the water use or the discharge has changed since January 1, 2006, a chronological description of all changes in water use or discharge including the period of time and dates in which they occurred.

³ For example, discharges to a wetland, pond or river, or infiltration into the ground.

5. Please provide a copy of all National Pollutant Discharge Elimination System (“NPDES”) permits or permit authorization notices in effect, including the permit numbers, and dates of coverage, since January 1, 2006 for any wastewater discharges described in response to Question 3. If a NPDES permit was not obtained for any wastewater discharges, provide a detailed explanation as to why a NPDES permit was not obtained.
6. If Assabet Sand and Gravel is developing plans to eliminate wastewater discharges or apply for permit coverage for any of its wastewater discharges, please provide the following information:
 - a. The actual or estimated cost of eliminating the discharge or applying for permit coverage.
 - b. The estimated ongoing annual costs of implementing the NPDES permit, including training, inspections, monitoring, and record keeping.
 - c. The detailed plans for eliminating the discharge.
7. Please provide the following information for stormwater discharges from each operation and industrial activity listed in response to Question 2:
 - a. Identify whether the operations and industrial activities described in response to Question 2 are conducted indoors or outside. For each operation and industrial activity that occurs outside, describe whether such activities are conducted under a storm-resistant shelter to prevent its exposure to stormwaters, including rain, snow, snowmelt, run-on, and subsequent runoff. For each operation and industrial activity exposed to such stormwaters, describe all controls that are in place to prevent pollutants from being exposed to stormwater and discharged during storm events. If there have been any changes to the activity’s exposure to stormwater or to the controls in place since January 1, 2006, please describe these changes.
 - b. For each stormwater discharge to surface waters or wetlands, a detailed site diagram that meets the conditions set forth in Part 5.1.2 of EPA’s *NPDES Multi-Sector General Permit for Stormwater Discharges from Industrial Activities*,⁴ effective September 29, 2008 (“2008 MSGP”). The diagram shall clearly illustrate: (1) sources contributing to the discharge; (2) means by which stormwater flows across and off each operational area; and (3) all diversion or control structures in place to reduce the pollutant load carried from each operational area.
 - c. A detailed description of the transport, storage, treatment, and ultimate disposition of any stormwaters listed in response to this Question.
 - d. For each discharge from any operation or activity to a surface water or wetland, state the name and location of the surface water or wetland. If unknown, identify the unnamed

⁴The permit can be found at the following website: www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf

surface water or wetland on a map and indicate the nearest named surface water or wetland.

- e. For discharges of stormwater to property not owned or controlled by Assabet Sand and Gravel, a copy of any lease, contract, or other documentation authorizing the release.
 - f. If the discharge of stormwater has changed since January 1, 2006, a chronological description of all changes in the discharge including periods of time and dates when the discharge changed.
8. If NPDES permit coverage was sought or obtained for stormwater discharges from January 1, 2006 to the present, please provide the following information:
- a. A copy of each original signed (and dated) application or Notice of Intent (“NOI”) used to first obtain stormwater permit coverage, and all subsequent applications or NOIs. If stormwater permit coverage has not been sought, provide a detailed explanation of your reason(s) for not seeking permit coverage.
 - b. A copy of the original and each subsequent permit or permit authorization notice, the permit number(s) and dates of coverage.
 - c. If there is a current Stormwater Pollution Prevention Plan (“SWPPP”), indicate when the original SWPPP was prepared and the dates of all revisions to the SWPPP. Please submit a complete copy of the SWPPP and any amendments made to the plan since January 2006. If a SWPPP was not prepared, please provide a detailed explanation of your reasons for not developing a SWPPP.
 - d. Consistent with the descriptions provided in the 2008 MSGP, provide a chronological listing of when the following types of inspections were performed:
 - i. “*Routine Facility Inspections*,” conducted to evaluate applicable stormwater pollution prevention measures.
 - ii. “*Quarterly Visual Assessment of Stormwater Discharges*.”
 - iii. “*Comprehensive Site Evaluation Inspections*,” conducted annually.
 - iv. “*Required Monitoring*” of stormwater discharges.
 - v. All other stormwater monitoring and inspections not included in response to Question 8.d. i through iv, above.
 - e. The name and credentials of all personnel who performed inspections listed in Question 8.d, above.
 - f. A copy of the inspection reports, inspection logs, or other applicable records for inspections conducted during the past calendar year and described under 8.d., above.

9. If Assabet Sand and Gravel is developing plans to eliminate or apply for coverage for its stormwater discharge, please provide the following information:
 - a. The actual or estimated cost of eliminating or applying for permit coverage.
 - b. The estimated ongoing annual costs of implementing the 2008 MSGP, including training, inspections, monitoring, and record keeping.
 - c. A copy of the detailed plans for eliminating the discharge.
10. Please provide a list of the oil storage⁵ capacity at Assabet Sand and Gravel. Include all underground and aboveground containers with storage capacity of 55 gallons or greater (including all tanks, drums, transformers, oil-filled systems, etc.), the type of oil stored in each container, and the storage capacity of each container. Indicate each container's age and method of construction (e.g., single or double wall, welded or riveted, steel or fiberglass). Also indicate whether secondary containment is provided around each container, and, if so, its method of construction (earth berm, steel wall, concrete block wall, poured concrete wall) and the total volume it can contain.
11. If Assabet Sand and Gravel has oil storage capacity at or above the federal thresholds established by 40 C.F.R. § 112.1(d)(1) (i.e., underground oil storage capacity equal to or greater than 42,000 gallons *-or-* aboveground oil storage capacity equal to or greater than 1,320 gallons), please provide a copy of the current Spill Prevention Control and Countermeasure plan ("SPCC Plan"), developed in accordance with 40 C.F.R. Part 112. If the SPCC Plan has been revised, provide the date of the initial SPCC Plan and the dates of all revisions.
12. Please indicate the date that Assabet Sand and Gravel first installed storage capacity for oil exceeding the federal Oil Pollution Prevention Regulations regulatory thresholds described in Question 11, above.
13. If Assabet Sand and Gravel is developing a new or revised SPCC Plan, please provide the following additional information:
 - a. The cost of preparing the new or revised SPCC Plan.
 - b. The cost of implementing the new or revised SPCC Plan (including the cost of constructing additional secondary containment at Assabet Sand and Gravel).
 - c. The ongoing annual cost of implementing the new or revised SPCC Plan, over and above the annual costs of the old SPCC Plan (including training, inspections and record keeping).

⁵ Under 40 C.F.R. § 112.2, "oil" is defined as oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

14. If completing an SPCC Plan, as required under the regulations, is not feasible within thirty (30) calendar days of receiving this Information Request, submit a detailed schedule of when the SPCC Plan will be completed and fully implemented. The schedule should include the name, address, license number, and state of licensure of the registered professional engineer certifying the SPCC Plan.⁶ If the SPCC Plan calls for the construction of secondary containment at Assabet Sand and Gravel, the schedule should include construction milestones.
15. If you believe that Assabet Sand and Gravel is not subject to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, and is therefore not required to have an SPCC Plan, please provide a detailed explanation supporting this determination.

End of Questions

⁶ Please note that if your Facility has aboveground oil storage capacity between 1320 gallons and 10,000 gallons, and meets the oil discharge history criteria as described in 40 C.F.R. § 112.3(g), you are not required to obtain a professional engineer certification of the SPCC Plan. Instead, you may self-certify your Facility's SPCC Plan consistent with the requirements of 40 C.F.R. § 112.6. If you choose to self-certify, in addition to providing EPA with the self-certified SPCC Plan, provide an explanation (with documentation) supporting the determination that your Facility is a "qualified facility" as defined in 40 C.F.R. § 112.3(g).

Enclosure 3

Stormwater Discharge Monitoring Program

1. Within five (5) days of receiving this Request, initiate sampling and analysis for each stormwater discharge from Assabet Sand and Gravel, as follows:
 - a. Collect samples during the first four (4) consecutive measurable storm events, as defined below.
 - b. After the first four (4) initial qualifying storm events, collect samples on a monthly basis thereafter. If no qualifying storm events occur during a given month, please inform the EPA of this in writing on a monthly basis.
 - c. Sampling and analysis should be performed at each outfall or discharge point (i.e. pipe, catch basin, runoff channel, drainage ditch, etc.)
 - d. All samples shall be collected and analyzed for total suspended solids ("TSS"), pH, and Nitrate plus Nitrite Nitrogen.

The collection and analysis of each sample shall be performed during a measurable storm event and in accordance with Part 6 and Part 8, Subpart J of the 2008 MSGP. A measurable storm event is defined in Part 6.1.3 of the 2008 MSGP. Sampling and analysis events shall also be accompanied by a recorded Visual Monitoring assessment. Visual Monitoring shall document observations and conditions set forth in Part 4.2 of the Permit. The sector-specific monitoring requirements are determined by the applicable SIC code(s).

For more information on the collection of samples, please refer to EPA's guidance manual entitled *Industrial Stormwater Monitoring and Sampling Guide, March 2009* (available at http://www.epa.gov/npdes/pubs/msgp_monitoring_guide.pdf).

2. Sampling and Analysis Protocols and Reporting Requirements:

Sample results (including a copy of the laboratory analytical reports) from every sampling event shall be reported to the EPA contact noted in the enclosed letter within five (5) days of Assabet Sand and Gravel receipt of the results.

All sampling and analyses must be performed in accordance with Agency-approved test and analytical methods, as set forth in 40 C.F.R. Part 136. Sampling information must contain the following:

- a. The date of the sampling event.
- b. The exact location where the sample is taken.
- c. The method used to collect the sample.

- d. The time of sampling event in relation to the start of the measurable storm event.
 - e. The duration and size (in inches) of the storm event.
 - f. The estimated or actual flow rate (in gallons per minute) of the discharge sampled.
 - g. The name and title of the person(s) collecting the sample.
 - h. The date the analysis was performed.
 - i. The name of the laboratory/person(s) performing the analysis.
 - j. The analytical techniques/methods used.
 - k. The results of such analysis.
 - l. A certification statement as outlined at 40 C.F.R. § 403.6(a)(2)(ii) signed by the appropriate signatory as defined at 40 C.F.R. § 403.12(l).
 - m. A chain-of-custody form for the sample.
3. If a sample result exceeds the benchmark monitoring concentration value defined in Subpart J, Table 8.J-1 of the 2008 MSGP, Assabet Sand and Gravel must explain the cause for the exceedance and explain what actions are being taken, or have been taken, to eliminate future exceedances.
4. If a pH sample result exceeds the effluent limitation defined in Subpart J, Table 8.J-2 of the 2008 MSGP, Assabet Sand and Gravel must explain the cause for the violation and explain what actions are being taken, or have been taken, to eliminate future violations.

Enclosure 4

Statement of Certification

I declare under penalty of perjury that I am authorized to respond on behalf of Assabet Sand and Gravel Company, Inc. I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

(Signature)

(Printed Name)

(Title)

(Date)

Enclosure 5

Small Business Regulatory Enforcement and Fairness Act (SBREFA) Information Sheet